115-24

NEWSLINK

Volume 1 – Issue 2 | Published by the Virginia Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Professionals | January, 1999

Calendar of Upcoming Events

February 18, 1999
Committee Meetings:
Regulatory, Examination, Supervision, Credentials
Richmond – Department of Health Professions

February 19, 1999
Board Meeting
Richmond – Department of Health Professions

April 24, 1999
Examinations:
Licensed Professional Counselor
Certified Rehabilitation Provider
Certified Substance Abuse Counselor

May 13-14, 1999
Board Retreat (Regular & Committee Meetings)
Mountain Lake Resort (near Blacksburg)

May 14, 1999
Examination: Licensed Marriage & Family Therapist

July 24, 1999
Examination: Licensed Professional Counselor

August 27, 1999
Board Meeting
Richmond – Department of Health Professions

October 23, 1999
Examination: Certified Substance Abuse Counselor

October 24, 1999
Examination: Licensed Professional Counselor

October 30, 1999
Examination: Certified Rehabilitation Counselor

November 11, 1999 – Tentative
Examination: Licensed Marriage & Family Therapist

November 19, 1999
Board Meeting
Richmond – Department of Health Professions

From the Editor...

By Eric Scalise – Chair, Public Relations Committee

It's a trend! We've made it to our second issue. There has been a lot of positive feedback from the first newsletter. Thank you! Our goal is to continue providing articles, regulatory/legislative updates and any pertinent news that will help keep you informed regarding Board business or be of professional interest.

The end of the Fall has come and Winter is upon us. For many, this time of year is a time for solitude and reflection. As mental health professionals, we often encourage our clients to take a "time out", to slow down and evaluate their decisions in a fast-paced, push-button instant everything society. What about us? Stress and burnout are ever present risks for those who work with people experiencing trauma in their lives. The term "Compassion Fatigue" has now been coined to describe this phenomena. American philosopher William McNamara framed it well when he said, ""we must, like a painter, take time to stand back from our work, to be still, and thus see what's' what....True repose is standing back to survey the activities that fill our days." Silence has wonderful creative power.

> "True silence is the rest of the mind, and it is to the spirit what sleep is to the body, nourishment and refreshment." William Penn, British Quaker

On behalf of all the Board staff and Board members, I hope you had a peaceful and meaningful holiday season and a joyous New Year. Again, please feel free to contact me at the Board address should you have any suggestions or feedback regarding the newsletter.

Board Information

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Board Member Profiles

Abigail C. Barnes, M.A., CSAC
Victoria, Va.
Department of Corrections;
Probation/Parole
1st term; expires 6/30/01

Timothy E. Clinton, Ed.D., LPC, LMFT
Lynchburg, VA
President, Light Associates, Inc.
1st term; expires 6/30/00

V. Maurice Graham, D.Min., LMFT
Richmond, VA
Associate Pastor, Bon Air Baptist
1st term; expires 6/30/00

Ruth Aileen Hancock, R.N.
Emory, VA
Citizen member
1st term; expires 6/30/00

Rosemarie S. Hughes, Ph.D., LPC
Virginia Beach, VA
Regent University; Dean of
Counseling and Human Services
1st term; expires 6/30/99

Michael Kelly, M.A., LPC, CSAC
Board Chair
Newport News, VA
Clinical Manager; Hampton-Newport
News Community Service Board
2nd term; expires 6/30/01

Howard R. King, Jr., Ph.D., LPC
Hampton, VA
Hampton University, Asst. Professor
of Psychology
1st term; expires 6/30/01

Jack Knapp, D.D.
Sandston, VA
Citizen Member
1st term expires 6/30/02

Susan D. Leone, Ed.D., LPC
Board Vice Chair
Midlothian, VA
Virginia Commonwealth Univ.,
Asst. Prof. of Counselor Education
1st term; expires 6/30/98

Janice F. McMillan, Ph.D., LPC, LMFT
Richmond, VA
Private practice, Dominion
Behavioral Healthcare
1st term; expires 6/30/01

Howard O. Protinsky, Ph.D., LPC, LMFT, LCSW
Roanoke, VA
Virginia Tech
Professor of Marriage and Family Therapy
1st term expires 6/30/02

Eric T. Scalise, Ed.S., LPC, LMFT
Williamsburg, VA
President, Beacon Counseling
and Consulting
Unexpired term; ends 6/30/99

Lynnette L. Shadoan, M.A., LPC
Richmond, VA
Private practice, Resource
Guidance Services
1st term; expires 6/30/01

J. Steve Strosnider, M.A., LPC
Salem, VA
Lewis Gale Clinic, Director
Div. of Counseling & Psychology
2nd term; expires 6/30/00

Regulatory Review

By Rosemarie S. Hughes, Ph.D.

On November 13th the Board adopted proposed amendments to its *Regulations Governing the Practice of Professional Counseling*, *Regulations Governing the Practice of Marriage and Family Therapy*, *Regulations Governing the Certification of Substance Abuse Counselors*, and new *Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners*. These proposed regulations will be submitted to the Administration for permission to publish in the *Virginia Register* and solicit public comment. It is anticipated that publication will occurr some time in the summer of 1999, with regulations becoming effective in early 2000. Anyone who would like to receive Notices of Public Comment should contact the Board Office at (804)662-9912 to be placed on the mailing list.

Highlights of the *proposed* amendments to the *Regulations Governing the Practice of Professional Counseling* include the following:

- An endorsement provision for practitioners licensed as counselors in other jurisdictions by substantially equivalent requirements to Virginia's.
- Recognition of CACREP and CORE-accredited programs as meeting the Board's definition of a counseling program.
- Updating the coursework requirements to include courses in addictions, research, multicultural counseling and marriage and family systems theory, and a 3 semester-hour minimum for all content areas.

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Regulatory Review (continued)

Results of a survey indicated that these courses are widely available in Virginia's graduate counseling programs. To accommodate students who have completed or are close to completing their 60 graduate hours, this requirement will have a 2-year delayed effective date, and education completed prior to the effective date may be accepted if it meets the requirements of regulations in effect at the time of completion.

- Changing the residency supervision hours from one hour per week to one hour per 20 hours of work experience, accepting group supervision as equivalent to face-to-face, and including a 2000 hour face-to-face client contact requirement. The on-site/off-site requirements for supervision were eliminated.
- Accepting internship hours meeting certain conditions toward the residency.
- Changing the prohibition on dual relationships to specify that sexual intimacies with clients are prohibited for five years after termination of professional services. In the event of a complaint, licensees shall bear the burden of proof that there has not been client exploitation.

Highlights of the *proposed* amendments to the *Regulations Governing the Practice of Marriage and Family Therapy* include the following:

- Replacing the requirement that all course work come from one sequential, integrated program with a definition of a graduate degree program in marriage and family therapy. This will allow students whose programs may have lacked a course to obtain the course from another program:
- Reducing the semester hour requirement in marriage and family studies and marriage and family therapy from 9 semester hours in each of the two content areas to 6 semester hours. Results of a survey indicate that the majority of Virginia's graduate programs are unable to offer the full 9 hours in each area. Students from one of these programs had petitioned the Board to change its rules after finding they could not meet the requirements without obtaining a second master's degree.
- Changing the residency requirement to conform with the changes proposed for professional counseling licensure to accept group supervision as equivalent to face-to-face, require 2000 hours of face-to-face client contact, and accept a graduate-level internship meeting certain criteria toward the residency.

Highlights for the *proposed* amendments to the *Regulations Governing the Certification of Substance Abuse Counselors* include:

- More specific instructions for application for certification by endorsement for individuals certified in other jurisdictions.
- Accepting group supervision as equivalent to face to face.
- Allowing individuals to act as supervisors with either a board-approved national certification or 2 years experience as a Virginia-certified substance abuse counselor.
- Changing the prohibition on dual relationships to specify that sexual intimacies with clients are prohibited for five years after termination of professional services. In the event of a complaint, the certified substance abuse counselor shall bear the burden of proof that there has not been client exploitation.

The proposed education requirement for the new licensure title of Substance Abuse Treatment Practitioner includes 27 graduate semester hours of general counseling course work plus 12 graduate semester hours in 5 substance abuse treatment competencies. This requirement represents the Board's best compromise between establishing requirements that ensure competency, while realizing the lack of substance abuse course work currently being offered in Virginia's graduate programs. The proposed 4000 hour residency requirement conforms with that for professional counseling and marriage and family therapy, with 2000 hours of face-to-face substance abuse client contact. The ethical standards were also developed to conform with the Board's other regulations. Once the regulations are in effect, the Board will issue a request for proposals in accordance with Virginia law to select an examination vendor.

An issue of considerable controversy for mental health practitioners and representatives of professional associations attending the meetings during development of the proposed regulations was interpretation of a statute which authorizes the Board to license individuals with "substantially equivalent" qualifications, education or experience to those in the Board's regulations. Some individuals and associations felt that this provision was intended to allow the Board to grant licensure to certified substance abuse counselors with lengthy experience and national certification, while others were opposed to granting the license to anyone with less than a master's degree. Although the proposed regulations do provide for endorsement of individuals holding other master's level mental health licenses with some substance abuse education and experience, there is no provision for a waiver for individuals with less than a master's degree.

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Regulatory Review (continued)

The Board was advised by Counsel that the statute does not provide for a time limited "grandfathering" of individuals who do not meet the requirements in the Board's regulations.

The Board plans to study the following issues in 1999:

- Reviewing the adequacy of the education and supervision requirements for substance abuse counselor certification.
- Working on better consistency among its regulations where possible.
- Looking at the possibility of an inactive licensure status for all categories of licensure.
- Developing jurisprudence exams for all licensure categories.
- Developing continuing education requirements for all practitioners
- Developing competencies for the marriage and family residency.
- Considering legislation to authorize the development of education requirements for individuals who act as supervisors.

If the Board determines that a regulatory change is necessary, it must obtain permission from the Administration prior to initiating the change.

Name & Address Changes

Board policy requires that all name and address changes be made in writing to the Board office. In the case of name change, a copy of the official document indicating the change is required. You can also FAX or e-mail the necessary information to the Board office at: FAX (804)662-9943 or e-mail coun@dhp.state.va.us

Statistical Information

Number of Licensees/Certificate Holders
(as of 1/6/99)

Licensed Professional Counselors	2,289
Licensed Marriage and Family Therapists	911
Certified Substance Abuse Counselors	1,116
Certified Rehabilitation Providers	2,071

For a fee, the National Board of Certified Counselors (NBCC), will look at your transcripts to see if they will meet licensure requirements. The NBCC office may be reached at: 1-(888)817-8283.

Board Changes

The Board wishes to thank both Dr. Nina Brown and Karen Pratt and express its gratitude for their years of service. Their terms expired in July, 1998.

Welcome to our two new Board Members, Dr. Jack Knapp and Dr. Howard Protinsky. Dr. Knapp, who is one of our two citizen members, serves as Executive Director of the Virginia Assembly of Independent Baptists. Dr. Protinsky is a Professor of Marriage & Family Therapy at Virginia Tech. Their terms expire on 6/30/2002.

DISCIPLINARY ACTIONS

The following are disciplinary actions of the Board taken since May, 1998 which have not been previously reported.

DOROTHEA C. ARDALAN, LPC #0701-000893
FINDINGS: Failure to monitor transference/counter transference; failure to maintain therapeutic boundaries; pursuing a dual relationship including marriage to a client; failure to disclose conflict of interest to client's spouse, to whom counseling was also provided.
SANCTION: License revoked.
Order entered May 15, 1998

CHARLES S. BROADFIELD, LPC, #0701 000320
FINDINGS: Plagiarism of evaluation conducted by another practitioner, misrepresentation on application for licensure.
SANCTION: Reprimand.
Order entered May 15, 1998

RICHARD D. HUEY, LPC, #0701-001379
FINDINGS: Mandatory suspension due to felony conviction in May 1998, several misdemeanor convictions for inappropriate sexual conduct outside of practice.
SANCTION: License reinstated on stayed suspension with terms.
Order entered October 19, 1998

Board Staff

Evelyn B. Brown, Executive Director

Janet D. Delorme, Deputy Executive Director

Joyce Williams, Administrative Assistant

Arnice Covington, Administrative Assistant

Practice Issues & Strategies – Therapy and Sexual Misconduct

By Eric Scalise, Ed.S.

In the short time that I have spent serving on this Board, I have had the opportunity to review most of the disciplinary issues brought before it. The high percentage of these cases which involve some form of sexual misconduct has repeatedly caught my attention. This statistic combined with the turmoil our nation is currently embroiled in regarding the President, leads to some sobering reflection.

There is significant personal, emotional, marital, social and financial harm suffered by most people who become entangled in sexual behavior when it is part of a helping or therapeutic relationship. This may be compounded by loss of spousal and support systems due to shame, self-blame and divorce. This is not only true for the client but also for the therapist or counselor. Ongoing research and empirical data consistently confirms this conclusion. In most instances, the victims are women and the perpetrators are men. Perhaps the greatest tragedy is the destruction of trust within the therapeutic relationship at a time when the client may be most vulnerable and in need of services.

For the counselor, there exists the potential for suspension/revocation of one's license as well as professional disreputation. One study done by Daniel Hogan in a review of malpractice issues indicated that 6-12% of all psychotherapists in the United States have engaged in some form of sexual or erotic contact with their clients, half of them with multiple clients. Nearly 50% of all lawsuits and licensure revocation actions against counselors are due to sexual misconduct and plaintiffs win over two thirds of these lawsuits. This is a higher success rate than for other kinds of malpractice issues. Following a growing national trend, many states have now criminalized sexual misconduct. Today, nearly all malpractice insurance companies are imposing caps on damages and legal defense fees when it comes to this issue. The amazing thing is that much of this legal response is based on statistics which show only 1-5% of victims report the misconduct and less than 5% of those actually file suit.

The licensing board in California has booklets available for all consumers entitled, "Professional Therapy *Never* Includes Sex." Historically, sexual misconduct has been defined as sexual intercourse or overt sexual contact. A broader and perhaps more prudent definition might also include any behavior or expression that may be reasonably understood to intend sexual contact, solicitation or innuendo.

The following are some guidelines that may be helpful in evaluating our personal responsibility in this area:

1. Sexual attraction is real and it's like fire – play with it and you will be burned. Avoid denial of the issue or your invulnerability to its effects. Be aware of sexual fantasy and its dangers in the therapeutic setting.
2. Sexual suggestions initiated by a client in therapy can produce the greatest potential for counter-transference. A counselor must learn to recognize this warning sign and address it as soon as possible. If necessary, discuss the situation with a colleague and/or make an appropriate referral of your client to another professional.
3. Maintain clear and consistent boundaries with all clients. Be aware and sensitive of touch, even therapeutic touch. Be careful of being alone in the office with a client when no other colleagues are around, especially someone of the opposite sex. Consider having co-facilitators when leading group therapy.
4. Learn to challenge yourself and question your motives in situations that any objective person may view as a dual relationship.
5. Seek out accountability relationships with other colleagues and commit to honest communication when having a struggle. Consider personal therapy if need be.

Liability, Ethics & the Law

Medical Records and the Professional

By Lynne Fleming, AAG (Assistant Attorney General)

Virginia's Patient Health Records Privacy Act ("the Act"), which became effective on July 1, 1997, consolidates statutes pertaining to medical and mental health records, establishes a standard for confidentiality of patient records, and sets out procedures for releasing those records. Because it incorporates many existing provisions of law, the Patient Health Records Privacy act is lengthy and complicated. The law is comprised of eight sections, each of which is summarized below.

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Subpart A: Statement of Purpose and Ownership of Records

The introductory section of the Act recognizes "a patient's right of privacy in the content of a patient's medical record." The statute declares that the medical records are the "property of the provider maintaining them" and makes the practitioner responsible for insuring that the patient's records are only released in accordance with law.

Subpart B: Definitions:

Key definitions are those of "provider" and "record." The definition of provider includes (a) all persons licensed, certified, registered or permitted by any regulatory board within the Department of Health Professions, except the Boards of Veterinary Medicine and Funeral Directors and Embalmers; (b) all state-operated hospitals or training centers; and (c) all persons and entities included in the definition of "provider" in Virginia Code § 8.01-581.1, which governs medical malpractice litigation. The definition of "Record" is expansive and includes all written, printed or electronically recorded material, maintained by a provider in connection with a patient, as well as the substance of any communication between the patient and provider during the course of providing services, and other information acquired by the provider about the patient in connection with the provision of health care services to the patient.

Section C: Exclusions

The Act does not apply to health care records created in connection with the Workers Compensation Act or to records of minors, except as issues concerning minors' records are specifically addressed in the statute.

Section D: Permissive Release of Records

This section sets out 24 situations in which patient health care records may be released by providers. Release of the records is not compelled by any of these 24 provisions; however, a provider who releases patient records in accordance with these provisions cannot be found to have violated the patient's right of privacy in his health care records.

Situations listed in the Act in which release of records is authorized include (but are not limited to): (a) with the consent of the patient, or in the case of a minor, the consent of the custodial parent of the minor; (b) in the course of an investigation, audit, review or proceedings regarding a provider's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; (c) where necessary in connection with the care of the patient; (d) in the normal course of business in accordance with accepted standards of practice within the health services setting; (e) when the patient has waived his right to the privacy of the records; (f) when examination and evaluation of a patient is undertaken pursuant to judicial or administrative law order; (g) to third party payors when the patient has requested that bills be submitted; (h) to support an application for receipt of health care benefits from a governmental agency, and (i) in the case of a deceased or mentally incapacitated patient, to the personal representative, executor, legal guardian or, in the following order of priority, a spouse, an adult son or daughter, either parent, an adult brother or sister or other relative.

In addition, the Act recognizes the following statutory provisions as authorizing or requiring release of records:

§ 54.1-2906, § 54.1-2907	*Mandatory reports to health regulatory boards*
§ 54.1-2966	*Reports of mental or physical disabilities of airline pilots*
§ 54.1-2966.1	*Reports of mental or physical disabilities of drivers*
§ 54.1-2967	*Reports of wounds inflicted by guns or knives*
§ 54.1-2968	*Information concerning disabled individuals to agencies*
§ 54.1-2400.1	*Mandatory reporting of direct threat to harm a third party*
§ 54.1-2405	*Upon the sale of a practice*
§ 54.1-2981	*Consistent with Health Care Decisions Act*
§ 8.01-581.16	*Reports to entities assessing quality, cost of services*
§ 8.01-399, § 8.01-400.2	*Court testimony, if condition at issue or ordered by court*
§ 63.1-55.3; § 63.1-248.11	*Reports of abuse of children or incapacitated adults*
§ 37.1-67.3	*To attorneys representing patients in civil commitment*
§ 37.1-128.1, § 37.1-132	*To guardian ad litem in guardianship proceeding for adult*
§§ 32.1-36, -36.1, -40,-41	*Reports of contagious diseases or deaths of public health importance*
§ 32.1-276	*Reports for health care data analysis*
§ 32.1-283	*Information to medical examiner*
§ 37.1-98.2	*State hospitals and community services boards*

Section E: Requirements for Responding to Requests for Records

This section specifies that requests for records must be made in writing, dated and signed by the requester, and include a reasonable description of the records sought as well as evidence of the authority of the requester to receive the

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records. Upon receipt of such a request, the provider has fifteen days to do one of the following: (a) provide copies of the records; (b) inform the requester if the information does not exist or cannot be found; (c) inform the requester of the provider who now maintains the records; (d) or deny the records for specific reasons set out in Section H of the statute.

Inquiries are frequently made to the Board as to whether the requester can be charged for his records and whether the production of records may be delayed until the payment is received. The statute is silent as to charging for records, and establishes neither a prohibition on charging nor a limitation on what amount may be charged per page. However, failure to pay charges for records is not listed in the statute as a permissible reason for refusing to respond to the requester within 15 days.

Section F: Refusal to produce records due to patient harm

The patient's physician or clinical psychologist may make a notation in a patient's record that furnishing of the records will be "injurious to the patient's health or well-being." If a patient's request for his record is denied for this reason, the provider must permit the record to be copied and reviewed by a physician or clinical psychologist, selected by the patient, of similar background to the individual who made the notation in the chart, and that practitioner may make a judgment as to whether the records should be made available to the patient.

Section G: Sample Consent Form

A proposed consent form authorizing release of a patient's record is included in this section of the statute.

Section H: Procedures for Issuing and Responding to Subpoenas:

This section requires the party issuing a subpoena for records to send a copy of the request to the individual whose records are being requested or to his attorney. If the individual whose records are requested is not represented by an attorney or if the individual is not a party to the underlying litigation, the party requesting the record must provide written notice of rights and remedies which are contained in the statute. Further, the statute specifies that the health care providers from whom the records are requested be provided with the following notice:

NOTICE TO PROVIDERS

IF YOU RECEIVE NOTICE THAT YOUR PATIENT HAS FILED A MOTION TO QUASH (OBJECTING TO THIS SUBPOENA) OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, SEND THE RECORDS ONLY TO THE CLERK OF THE COURT WHICH ISSUED THE SUBPOENA USING THE FOLLOWING PROCEDURE: PLACE THE RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF THE COURT WHICH STATES THAT CONFIDENTIAL HEALTH CARE RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING THE COURT'S RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT.

The health care provider must wait ten days after his receipt of a subpoena for records before releasing them to the party requesting them or to the appropriate court.

The provisions concerning subpoenas do not apply to administrative subpoenas, such as those issued by the Department of Health Professions or other state agencies. Any subpoena for records pertaining to treatment for substance abuse must comport with federal law requirements for the confidentiality of these documents.

Despite its detail, the statute contains no enforcement provisions. Because patients are not accorded a specific remedy for violation of the statute, the Department of Health Professions ("DHP") frequently receives complaints concerning providers' alleged failure to appropriately provide records or the alleged release of confidential information outside the provisions of the statute. When it is apparent that the provider is unaware of the provision of the Act, DHP initially attempts to inform the provider of obligations under the act and to produce voluntary compliance. When this approach is unsuccessful in achieving a resolution of the issues raised in the complaint, a full investigation is conducted and, where appropriate, disciplinary proceedings are initiated by the appropriate health regulatory board.

Ask the Staff

Q. Are Verifications of supervision required to be submitted annually?
A. No. Verification of supervision forms are submitted at the time the applicant applies for the license.

Q. If an applicant finishes with one supervisor but has not completed the entire 4,000 hours, should the applicant submit a verification of supervision form at that time or when the applicant is ready to apply for the license?
A. At the time an applicant applies for the license, the applicant is required to submit with the application package all verifications of supervision in a sealed envelope with the signature of the supervisor across the seal of the envelope.

Q. How should the supervisor document the group hours on the verification of supervision form?
A. Supervisors should state the actual number of hours of group supervision given the applicant. The Board's reviewer will recalculate the hours when doing its review.

Questions that you wish to have answered in "Newslink" may be submitted to Joyce Williams at DHP.

VIRGINIA BOARD OF LICENSED PROFESSIONAL COUNSELORS MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE PROFESSIONALS
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